

### **REMARKS**

This Amendment is responsive to the Office Action mailed on August 23, 2004. Claims 1 and 10 have been amended. Claims 1-20 are pending.

The Examiner has objected to claim 30 as it follows claim 19, and indicates that it should be treated as claim 20 for purposes of Examination. Applicants note that this issue was addressed in Applicants' Preliminary Amendment filed with the Application on September 21, 2001, wherein claim 30 was renumbered as claim 20. Withdrawal of this objection is respectfully requested.

Claims 1-20 were rejected under 35 U.S.C. § 102(b) as being anticipated by Metz (US 5,666,293).

Applicants respectfully traverse these rejections in view of the amended claims and the following comments.

#### **Discussion of Amended Claims**

Claims 1 and 10 are amended to specify that the digital appliance is an end-user digital appliance.

#### **Discussion of Metz**

Claims 1-20 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Metz. This rejection is respectfully traversed. An anticipation rejection requires that each and every element of the claimed invention as set forth in the claim be provided in the cited reference. See *Akamai Technologies Inc. v. Cable & Wireless Internet Services Inc.*, 68 USPQ2d 1186 (CA FC 2003), and cases cited therein. As discussed in detail below, Metz does not meet the requirements for an anticipation rejection.

Metz discloses downloading of an operating system or operating system upgrades to a set-top box over a broadcast channel in a digital broadcast network. A software server 12 is capable of providing downloads to the set-top 100. The downloads contain operating system software or

upgrades for the operating system software of the set-top 100 (Abstract, Col. 8, lines 26-64).

In Metz, different network operators (e.g., Video Information Providers) that provide the set-top boxes will provide the operating system update services for that set-top (Col. 8, lines 41-51).

In Metz, it is the remote software server 12 which stores different versions of operating system software for downloading to the set-tops 100 to enable the set-top to be compatible in different networks (Col. 5, lines 25-38). The set-top 100 of Metz stores only a single version of the operating system, and receives updates or new versions as necessary from the remote server.

In contrast to Metz, with Applicants' claimed invention, different versions of firmware and/or application program code are stored at the end-user digital appliance (which may, for example, be a set-top box or other digital appliance in the user's home). By storing these different versions of firmware and/or application program code at the end-user digital appliance, the digital appliance can select an appropriate version depending on criteria of the network it is in, and load that version to enable operation in that network.

Therefore, with Applicants' claimed invention, network compatibility of the end-user digital appliance is achieved by storing different versions of firmware and/or application program code locally at a storage component (memory) of the end-user digital appliance. In contrast, Metz achieves network compatibility of the set-top by downloading an appropriate version of operating system software from a remote server to the set-top.

Applicants' systems provides the benefit that end-user digital appliances can configure themselves for a particular network: (1) without requiring access to an external communication channel, or (2) where the digital appliance is unable to communicate to the external network due to incompatible communication protocols (see, e.g., Applicants' specification, page 2, lines 14-16; page 11, line 8 through page 12, line 2). The system disclosed in Metz does not provide these advantages, since the operating system download must come from a remote server, which requires an external communication channel from the server to the set-top.

Metz does not disclose or remotely suggest storing different versions of firmware and/or application program code in memory at the end-user digital appliance (set-top of Metz) such that

the digital appliance can select the appropriate version from its own memory, based on predetermined criteria relating to the network, and load the appropriate version to enable the digital appliance to operate in the network, as set forth in Applicants' claims.

As Metz does not disclose each and every element of the invention as claimed, the rejections under 35 U.S.C. § 102(b) are believed to be improper, and withdrawal of the rejections is respectfully requested. See, *Akamai Technologies Inc.*, *supra*.

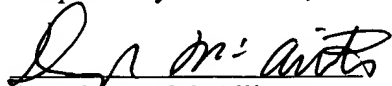
Applicants respectfully submit that the present invention is not anticipated by and would not have been obvious to one skilled in the art in view of Metz, taken alone or in combination with any of the other prior art of record.

Further remarks regarding the asserted relationship between Applicant's claims and the prior art are not deemed necessary, in view of the foregoing discussion. Applicants' silence as to any of the Examiner's comments is not indicative of an acquiescence to the stated grounds of rejection.

#### Conclusion

The Examiner is respectfully requested to reconsider this application, allow each of the pending claims and to pass this application on to an early issue. If there are any remaining issues that need to be addressed in order to place this application into condition for allowance, the Examiner is requested to telephone Applicants' undersigned attorney.

Respectfully submitted,



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